

SENATE BILL 1313

By McNally

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 4, relative to excise taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tax Apportionment Fairness Act of 2015."

SECTION 2. Tennessee Code Annotated, Section 67-4-2013, is amended by adding a new subsection (e), as follows:

(e)

(1) Notwithstanding any other provision of this part, the net earnings of a qualified manufacturing taxpayer shall be apportioned for excise tax purposes to this state solely pursuant to this subsection (e) if the qualified manufacturing taxpayer certifies to the commissioner that it meets the criteria provided in subdivision (e)(7)(E) and elects to apportion net earnings pursuant to this subsection (e) during the election period.

(2) The apportionment formula for a qualified manufacturing taxpayer that meets the requirements of this subsection (e) shall be as follows:

(A) For tax years beginning on or after July 1, 2016, and prior to July 1, 2017, all net earnings of a qualified manufacturing taxpayer shall be apportioned for excise tax purposes to this state by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus three (3) times the receipts factor and the denominator of the fraction shall be five (5);

(B) For tax years beginning on or after July 1, 2017, and prior to July 1, 2018, all net earnings of a qualified manufacturing taxpayer shall be apportioned for excise tax purposes to this state by multiplying the earnings by a fraction, the numerator of which shall be the property factor plus the payroll factor plus eight (8) times the receipts factor and the denominator of the fraction shall be ten (10); and

(C) For tax years beginning on or after July 1, 2018, all net earnings of a qualified manufacturing taxpayer shall be apportioned for excise tax purposes to this state by multiplying the earnings by a fraction that shall be comprised solely of the receipts factor.

(3) The certification and election required by subdivision (e)(1) shall be made upon forms prescribed by the department and provide any information as may be reasonably required by the commissioner consistent with this subsection (e).

(4) The value of a capital investment shall be determined as follows:

(A) Valued at original cost to the taxpayer in accordance with generally accepted accounting principles; provided, that if the taxpayer does not maintain the taxpayer's books and records in accordance with generally accepted accounting principles, the value of the capital investment shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes; and

(B) Valued on an aggregate basis, if more than one (1) facility is located within this state.

(5) If more than one (1) facility described in subdivision (e)(7)(A) is located in this state, then the number of qualified manufacturing jobs shall be determined on an aggregate basis.

(6) For purposes of subdivision (e)(2), where a taxpayer's tax year is determined for federal tax purposes pursuant to 26 U.S.C. § 441(f) as ending on the last day within the month of June nearest to June 30, the next tax year for the taxpayer shall be considered as beginning on or after July 1.

(7) As used in this subsection (e), unless the context otherwise requires:

(A) "Capital investment" means an investment in real property or tangible personal property, or both, in a facility or facilities within this state where the principal business at the facility or facilities is fabricating or processing tangible personal property for resale and ultimate use or consumption off the premises of the facility or facilities;

(B) "Election period" means a minimum of five (5) tax years, beginning with the tax year immediately following the tax year in which the election under this subsection (e) is made and continuing for five (5) consecutive tax years and for subsequent tax years until revoked by the taxpayer making the election;

(C) "Payroll factor," "property factor," and "receipts factor" have the same meanings as described in § 67-4-2012;

(D) "Qualified manufacturing job" means a job position that is permanent, rather than seasonal or part time, at the facility or facilities described in subdivision (e)(7)(A), and is for at least thirty-seven and one-half (37.5) hours per week; and

(E) "Qualified manufacturing taxpayer" means any person as defined in § 67-4-2004 who:

(i) Is a manufacturer as defined in § 67-4-2121;

(ii) Is subject to the excise tax imposed by this part;

(iii) Is entitled to apportion net earnings pursuant to § 67-4-2010; and

(iv)

(a) Has made prior to the election period and maintains during the election period a minimum capital investment in the aggregate of fifty million dollars (\$50,000,000), as determined pursuant to subdivision (e)(4), and has created prior to the election period and maintains during the election period a minimum of two hundred (200) qualified manufacturing jobs in the aggregate, as determined pursuant to subdivision (e)(5); or

(b) Has made prior to the election period and maintains during the election period a minimum capital investment in the aggregate of ten million dollars (\$10,000,000), as determined pursuant to subdivision (e)(4), and has created prior to the election period and maintains during the election period a minimum of twenty-five (25) qualified manufacturing jobs, as determined pursuant to subdivision (e)(5), if the taxpayer has at least one (1) facility located in a tier 2 or tier 3 enhancement county as reported on the list published annually by the department of economic and community development pursuant to § 67-4-2109(a).

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.